

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

REVIEW OF SELECTED CONTRACTS
FOR CLEANUP OF THE STRINGFELLOW
TOXIC WASTE DISPOSAL SITE

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL
FOR THE
JOINT LEGISLATIVE AUDIT COMMITTEE

P-244

REVIEW OF SELECTED CONTRACTS
FOR CLEANUP OF THE
STRINGFELLOW TOXIC WASTE DISPOSAL SITE

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P-244

Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning selected contracts for cleanup of the Stringfellow toxic waste disposal site. This report answers questions posed by the Legislature pertaining to contractor selection, contractor compliance with contract provisions, and effectiveness of the interim cleanup at the site. We also make recommendations on the future selection of contractors at the Stringfellow site and discuss federal reimbursement for the cleanup work.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

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SUMMARY

The Stringfellow toxic waste disposal site was operated as a licensed toxic waste disposal site from 1956 to 1972. During this time, approximately 34 million gallons of toxic waste were discharged at the site. As a result of a spill of toxic waste into a nearby stream and contamination of underground water, use of the site for disposing toxic waste was officially stopped in 1975. From 1976 through 1982, when interim cleanup work was completed, the State Water Resources Control Board (state board) and the Santa Ana Regional Water Quality Control Board (regional board) let contracts totalling approximately \$4.5 million for cleanup of the Stringfellow toxic waste disposal site. The Department of Health Services (department) also let contracts for work at the site.

In response to questions from the Legislature regarding five issues related to the cleanup of the Stringfellow site, we examined information pertaining to the letting of the contracts, the contractors' compliance with the contracts, and the effectiveness of the interim cleanup. In this report we also make recommendations for future selection of contractors, and we discuss federal reimbursement to cover costs of the cleanup.

Letting of Contracts

We reviewed 17 of the 27 contracts let by the two boards and found that in letting 14 of the 17 contracts, the boards did not comply with the competitive bidding procedures specified in the State Contract Act and the State

Administrative Manual. However, because of the emergency nature of the problems and to expedite the cleanup, the Legislature had enacted legislation (Chapter 315, Statutes of 1979) that exempted these boards and state agencies from the requirements for competitive bidding when letting contracts for work at the Stringfellow site. The department was also exempt from these requirements until January 1, 1983, when it became responsible for the Stringfellow site. After January, the department was exempt from these requirements only in emergency situations. We reviewed three contracts let by the department; two of these were let prior to 1983. The department complied with the State's competitive bidding requirements in all three contracts.

Contractor Compliance

Three of the four major contractors involved in the cleanup of the Stringfellow site did not comply with some of the provisions in their contracts. We could not determine whether the fourth contractor complied with contract provisions. In several instances, we could not determine whether the contractors had complied with the contracts because the provisions of the contracts were vague, because the work performed resulted in temporary structures that no longer exist, or because determining compliance would have been costly and would duplicate work being done by the department. Instances of contractor noncompliance were not related to the procedures used by the boards and the department to let the contracts.

Effectiveness of Interim Cleanup

The Federal Environmental Protection Agency (EPA) hired two engineering consulting firms to assess the interim

cleanup work performed at the Stringfellow site. The consultants reported that the cleanup work was effective as an interim solution to the problem of containing the toxic waste. In addition, the department has issued a Request for Proposal for a study to determine what additional work needs to be done to permanently close the site. This study should be completed by March 1985. Because of the EPA consultants' assessments and the department's study, we performed no independent work to determine the effectiveness of the interim cleanup work at the Stringfellow site.

Future Selection of Contractors

Future selection and effectiveness of contractors for cleanup work at the Stringfellow site could be improved if the responsible agencies let contracts in accordance with the State Contract Act and the State Administrative Manual. The State established these laws and regulations to ensure that public agencies let contracts to qualified contractors at the lowest possible cost to the State. Agencies that contract for future work at the Stringfellow site should not be given an unqualified exemption from these laws and regulations. In letting contracts, agencies should follow procedures that meet the intent of provisions in the State Contract Act and the State Administrative Manual. Also, review of construction contracts and construction management practices by public agencies or personnel experienced in public works projects would ensure greater contractor effectiveness. Additionally, agencies responsible for the cleanup work should streamline contract processing to minimize delays.

Federal Funds for the Cleanup

On June 2, 1982, the department applied to the EPA for a cooperative agreement, requesting approximately \$6.2 million to pay for past and future cleanup of the Stringfellow toxic waste disposal site. In August 1982, the EPA suspended processing the application in order to have parties responsible for the site pay for the cleanup. On June 10, 1983, the department submitted an amended application for a cooperative agreement, requesting approximately \$12.0 million (\$4.3 million for past cleanup work and \$7.7 million for future work).

On July 28, 1983, the EPA approved approximately \$4.2 million to pay for past cleanup work and approximately \$5.8 million to fund future cleanup work. However, the EPA actually granted only approximately \$2.8 million and restricted this grant to pay for future cleanup work. Additional reimbursement for cleanup work will depend on future EPA appropriations. The department accepted the \$2.8 million grant and has asked the EPA to grant the additional \$7.2 million.

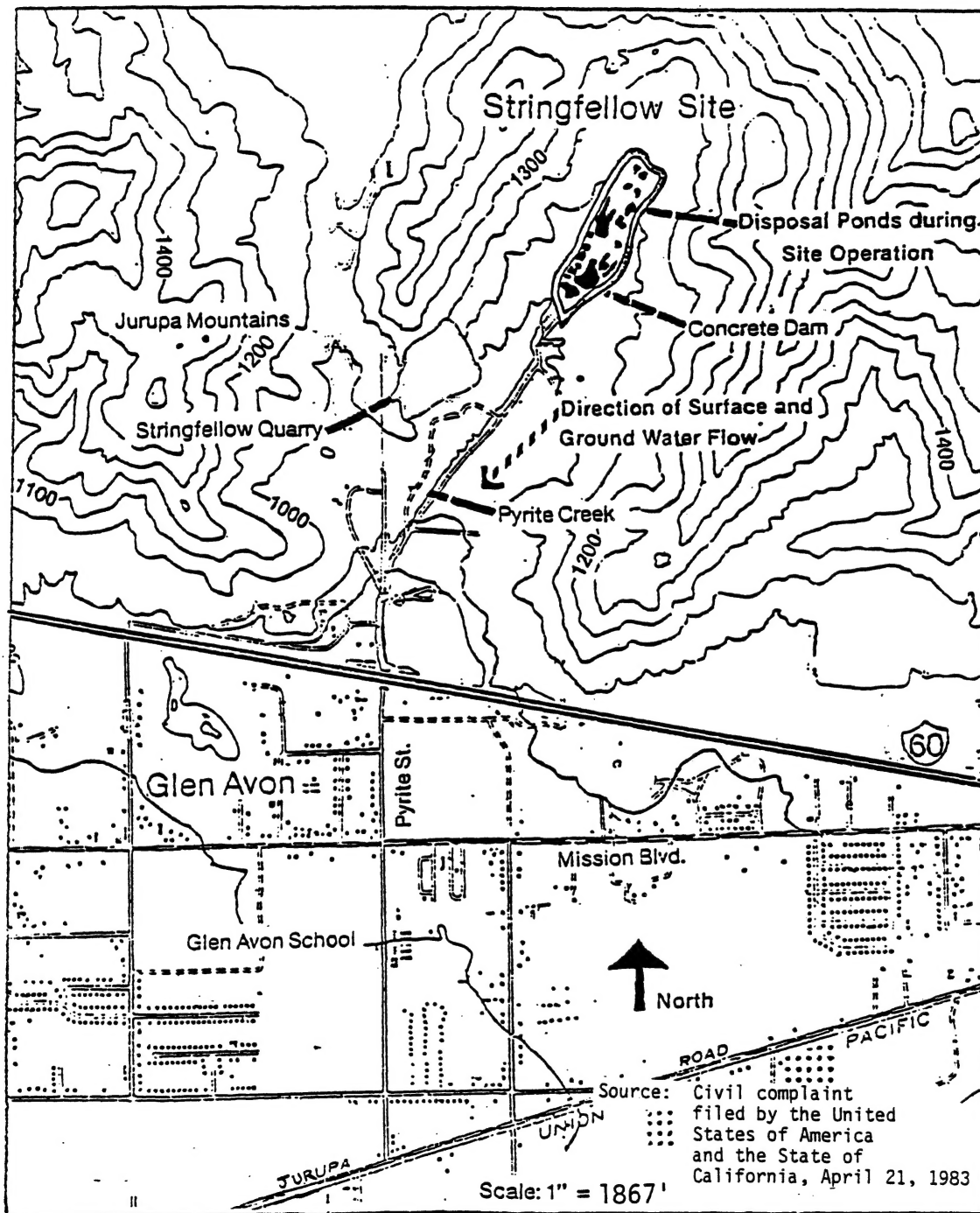
INTRODUCTION

The Stringfellow toxic waste disposal site is located in Riverside County, approximately five miles northwest of the City of Riverside and one mile north of the community of Glen Avon. As shown in Exhibit 1 on the following page, the site is situated in a canyon on the southern slopes of the Jurupa Mountains. It lies in the natural drainage path of approximately 270 acres of the canyon watershed at the head of Pyrite Creek. The total land area of the disposal site is about 22 acres.

The Stringfellow toxic waste disposal site was opened by the Stringfellow Quarry Company in 1956. The requirements specifying the kinds of toxic waste that could be discharged at the site and the methods for discharge were set by the Santa Ana Regional Water Quality Control Board (regional board); Riverside County granted a land use variance for the site. In the original investigation of the area in 1955, the State Department of Water Resources, then known as the "Division of Water Resources," determined that the rock materials forming the site created an impermeable barrier and could contain liquid waste.

EXHIBIT 1

THE STRINGFELLOW
TOXIC WASTE DISPOSAL SITE



Between 1956 and 1972, approximately 34 million gallons of toxic waste were discharged at the site. The waste consisted primarily of acids, heavy metals (such as chromium and lead), and DDT. Evaporation ponds held the waste on the site.

In 1969, heavy rains caused a spill of the toxic waste. Contaminated material overflowed the holding ponds into the nearby Pyrite Creek and ran downstream through the community of Glen Avon. After this incident, the community began to seek closure of the site. In November 1972, the Stringfellow Quarry Company voluntarily stopped receiving toxic waste at the site. Riverside County revoked the land use variance for the site in 1974, and in 1975, the regional board declared the site a public nuisance and placed a lien on the property to cover the costs of remedying problems at the site. The regional board had also discovered that toxic waste had contaminated underground water near the site.

In 1976, the regional board and the State Water Resources Control Board (state board) hired James M. Montgomery, Consulting Engineers, Inc. (JMM), to determine options for cleanup of the site. JMM's report recommended capping the toxic material with a clay cover. In 1978, the State Legislature appropriated funds to implement this program. Before action could be taken to cover the toxic material, heavy

rainfall again caused toxic waste to spill into Pyrite Creek and flow downstream through Glen Avon. To prevent further uncontrolled discharge from the site, the regional board supervised a "controlled release" of 800,000 gallons of contaminated rainwater into Pyrite Creek.

At a public hearing in July 1980, the regional board selected total removal of the toxic waste as the method for permanently closing the site. In a report to the regional board, JMM estimated the cost of total removal at between \$20 million and \$40 million. When the regional board could not get the funding for this plan, it adopted a resolution to implement an "interim abatement program" to clean up the site and protect the community downstream.

The interim abatement program was designed to ensure that toxic waste did not escape from the site. This work, which began in 1981, included hauling liquid waste from the site, constructing a clay barrier and drainage channels, and neutralizing and capping the site with clay material. The program also included efforts to control the underground movement of contaminated water.

The state board awarded a grant of \$4 million to the regional board to pay for the interim abatement program; both boards participated in letting contracts to private contractors

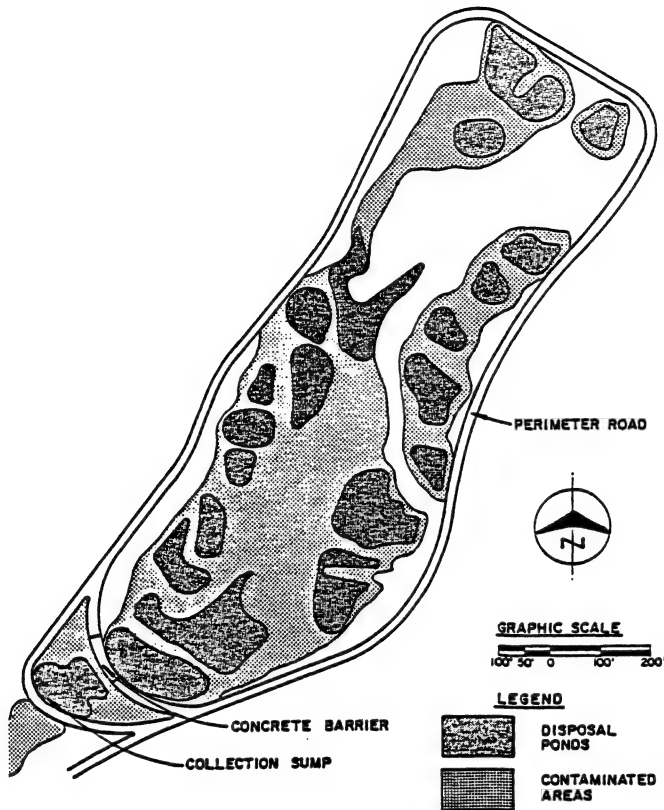
for the cleanup work. To expedite the interim abatement program, the Legislature enacted legislation (Chapter 315, Statutes of 1979) that exempted the two boards and any state agency contracting for work at the Stringfellow site from state laws and regulations governing the letting of contracts by public agencies. The interim abatement program was completed in 1982.

Exhibits 2 and 3 on the following page show diagrams of the site during the disposal operation and after the completion of the interim abatement program. During the disposal operation, the disposal ponds, shown in Exhibit 2, were constructed from soils and rock waste material from the Stringfellow quarry. The site was encircled by an earthen ridge that diverted runoff from the canyon away from the disposal ponds. A concrete barrier contained surface runoff from the ponds. A collection sump caught liquid waste from the lowest pond that seeped under or around the concrete barrier.

Exhibit 3 shows the site conditions after completion of the interim abatement program. The site was graded for proper drainage control, and concrete gutters and gunite channels were installed to catch surface runoff. The site was neutralized and covered with a clay cap. Several wells were installed to monitor water quality or catch and pump out any

EXHIBIT 2

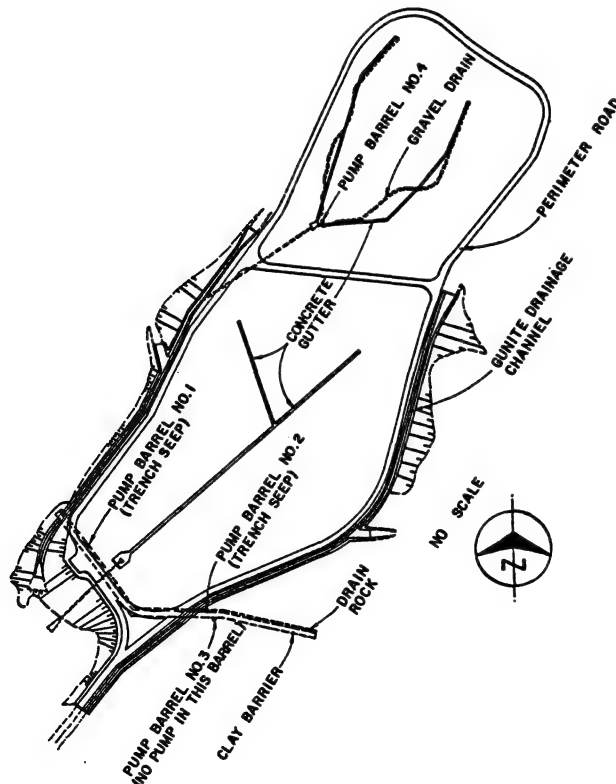
SITE PLAN DURING DISPOSAL OPERATION



Source: "Stringfellow Technical Audit Report for U.S. Environmental Protection Agency, Cincinnati, Ohio." July 7, 1983. Black & Veatch, Consulting Engineers.

EXHIBIT 3

SITE PLAN CURRENT CONDITIONS 1983



Source: "Stringfellow Technical Audit Report for U.S. Environmental Protection Agency, Cincinnati, Ohio." July 7, 1983. Black & Veatch, Consulting Engineers.

contaminated liquid. Additionally, the concrete barrier was removed and replaced with a clay barrier at the southern end of the site.

In 1981, the State purchased the Stringfellow site after tax default by the Stringfellow Quarry Company, Inc. As of January 1, 1983, the Department of Health Services (department) has responsibility over the Stringfellow site. In the legislation giving the department responsibility over the site, the Legislature removed the department's exemption from state laws and regulations governing the letting of contracts, which had applied to all state agencies under Chapter 315, Statutes of 1979. As of January 1, 1983, the department is exempt from these requirements only in emergency situations. The Legislature passed a bill on September 15, 1983, that permits the department to prequalify bidders for emergency toxic waste cleanup. The department has signed an agreement with the Federal Environmental Protection Agency (EPA) to provide federal funding for future work at the Stringfellow site. According to the department's staff person responsible for coordinating activities at the Stringfellow site, as of September 1, 1983, approximately 15,000 gallons of liquid toxic waste are hauled from the site daily to another toxic waste dump.

SCOPE AND METHODOLOGY

This report answers the following questions from the Legislature about the cleanup of the Stringfellow toxic waste disposal site:

1. Did the procedures for selecting contractors conform to the State Contract Act and the State Administrative Manual?
2. Did the contractors fulfill the provisions of the contracts?
3. Did the work of the contractors solve the problems at the Stringfellow site?
4. What changes could be made to improve the future selection and effectiveness of contractors at the Stringfellow site?
5. Will there be any federal reimbursement to cover the costs of cleaning up the Stringfellow site?

To answer these questions, we reviewed 17 contracts let by the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board to the four major contractors involved in the cleanup of the Stringfellow site. The contracts constitute 86 percent of the approximately \$4.5 million in total contract expenditures for cleanup work at the site from 1976 through 1982. We also reviewed 3 contracts

let by the Department of Health Services from November 1982 through February 1983.

As part of our review, we interviewed officials of the regional and state boards, James M. Montgomery, Consulting Engineers, Inc. (the prime engineering contractor), the Department of Health Services, the Environmental Protection Agency, and the Attorney General's office.

Our review was limited to the questions posed by the Legislature. We did not conduct a financial audit of these contracts.

ANALYSIS

In the following sections of this report, we answer the five questions from the Legislature regarding the cleanup of the Stringfellow toxic waste disposal site.

Did the Procedures for Selecting Contractors Conform to the State Contract Act and the State Administrative Manual?

We reviewed 17 contracts let by the State Water Resources Control Board (state board) and the Santa Ana Regional Water Quality Control Board (regional board) for cleanup of the Stringfellow toxic waste disposal site. Fourteen of these contracts were not let in conformance with competitive bidding procedures outlined in the State Contract Act and the State Administrative Manual. However, the Legislature exempted the two boards from following these procedures. The Department of Health Services (department) was also exempt from these requirements until January 1, 1983. After January, the department was exempt from these requirements only in emergency situations. In our examination of three contracts let by the department, two of which were let prior to 1983, we determined that the department let the three contracts in conformance with the competitive bidding procedures of the State Contract Act and the State Administrative Manual.

The State Contract Act requires that public agencies contracting for public works projects print a notice of the project in a newspaper or trade paper, solicit bids for projects over \$25,000, prepare plans, specifications, and cost estimates, and let the contract to the lowest responsible bidder. The State Administrative Manual provides state agencies with guidelines for contracting for public works projects and various services. The State Administrative Manual stipulates that state agencies should secure at least three competitive bids or proposals on all contracts (or explain why three bids were not secured), let the contract to the lowest responsible bidder, and provide a clear and complete statement of work to be performed by the contractor.

Prior to January 1, 1983, contracts let by state agencies were also to be approved by the Department of General Services, the Department of Finance, and the State Personnel Board. These three state agencies checked for compliance with laws and regulations, assured that funding was available for the work, and determined if civil service employees could perform the work. The requirement that these three agencies approve contracts was removed, effective January 1, 1983; however, all but one of the contracts we reviewed were let while the requirement was in effect.

Chapter 315, Statutes of 1979, exempted from these requirements the regional and state boards and all state agencies letting contracts for work at the Stringfellow site. The regional board asked for an exemption from these laws and regulations so that it could let contracts more promptly, especially for work needed in emergency situations. Also, in several instances, the regional board used Section 13304(b) of the California Water Code, which allows regional water quality control boards to enter into oral contracts for work needed in emergency situations without first having the contract approved by the Department of General Services.

We reviewed 17 contracts let by the regional and state boards to the four major contractors at the Stringfellow site. These contracts totalled approximately \$3.8 million, 86 percent of the approximately \$4.5 million paid to contractors for work at the site from 1976 through 1982. Table 1 on the following page shows the number of contracts we reviewed for each of the four contractors and the total amount of the contracts.

TABLE 1
CONTRACTS LET TO THE FOUR
MAJOR CONTRACTORS, 1976 THROUGH 1982

<u>Contractor/(Work)</u>	<u>Number of Contracts</u>	<u>Contracted Amount</u>
Stringfellow Quarry Company, Inc. (maintenance services)	5	\$ 103,800
James M. Montgomery, Consulting Engineers, Inc. (construction management)	5	619,160
Paul Hubbs Construction Company (construction work)	5	2,725,785
Chancellor and Ogden, Inc. (hauling of liquid waste)	<u>2</u>	<u>400,000</u>
Total	<u>17</u>	<u>\$3,848,745</u>

Fourteen of the 17 contracts that we reviewed were not let in accordance with the competitive bidding provisions of the State Contract Act and State Administrative Manual. The regional and state boards awarded these 14 contracts as "sole source contracts," that is, without soliciting bids from other firms to perform the work. From 1976 to 1981, the boards awarded 5 contracts to the Stringfellow Quarry Company, Inc., the previous owner of the site, to provide maintenance services at the site; the boards did not advertise the contracts or ask for bids from other potential providers of these services.

The regional and state boards also awarded four sole source contracts to James M. Montgomery, Consulting Engineers, Inc. (JMM). In 1976, JMM performed the initial engineering study for cleanup of the Stringfellow site. After the completion of the study, JMM proposed to the regional board that JMM provide consulting engineering services at the site. The regional board accepted this proposal and did not solicit bids from other engineering firms for any of these services. JMM continued to propose work to the regional board and received three additional sole source contracts.

The state board and the regional board also awarded four contracts to the Paul Hubbs Construction Company without soliciting bids from other contractors for the work. The contracts were for repairs to various earthen dams, rock drilling for wells, and other tasks such as excavation of soil and grading of the site.

Additionally, the regional board had liquid waste hauled from the site by Chancellor and Ogden, Inc., for three years before entering into a contract. The cost for the work performed without a contract amounted to approximately \$416,000. When the regional board did let a contract to Chancellor and Ogden, Inc., in 1980, other contractors protested not having the opportunity to bid for this work. In letting the next contract in 1981, the regional board contacted

other haulers for bids. The regional board let the contract to Chancellor and Ogden, Inc., the lowest bidder.

We also reviewed three contracts let by the Department of Health Services for cleanup of the Stringfellow site. Under Chapter 315, Statutes of 1979, the department was exempt from complying with the State Contract Act and the State Administrative Manual in letting the contracts; the department's exemption ceased when it became responsible for the site on January 1, 1983. After January, the department was exempt from these requirements only in emergency situations. Although two of the three department contracts we reviewed were let before January 1, 1983, all three contracts were competitively bid and let to the lowest responsible bidder in accordance with state guidelines.

We also found that the regional board permitted some contractors to begin work before the contracts were approved. The State Administrative Manual states that work must not begin before contracts are approved. Most Stringfellow cleanup contracts initiated by the regional board were reviewed and approved by the state board. However, the executive officer of the regional board explained that the regional board permitted work to begin before contracts were approved because of slow processing by the state board.

The department's former Stringfellow site coordinator told us that the department's processing of contracts is also often not prompt. However, on none of the three contracts let by the department did contractors begin work before the contracts were approved and signed.

Did the Contractors Fulfill the Provisions of the Contract?

Three of the four major contractors performing cleanup work at the Stringfellow site did not comply with some provisions of their contracts; we could determine noncompliance in 3 of the 17 contracts that we reviewed. We could not determine compliance or noncompliance with contracts let to the fourth contractor. In some cases, we were unable to determine compliance with contract provisions because many of the contracts contained vague or general provisions, or because the work performed resulted in temporary structures that no longer exist. Furthermore, in other cases, we could not assess compliance with the contracts because doing so would require costly engineering work.

In one contract, the regional board contracted with the Paul Hubbs Construction Company for rock drilling for well construction. The contractor did not complete the drilling because the contractor began drilling with the wrong drilling equipment. When the equipment failed, the rock drilling was

discontinued. The regional board used the funds originally allocated for the drilling contract to pay the contractor for other construction work. However, a year later the regional board again contracted with the Paul Hubbs Construction Company for the same rock drilling project at more than twice the price of the first contract (the first contract was for \$18,250, the second was for \$37,222). The contractor subsequently subcontracted all the work to a well-drilling company.

In another instance, the regional board contracted in 1981 with James M. Montgomery, Consulting Engineers, Inc., to provide plans and specifications for fencing and security. JMM never developed these plans and specifications. However, the regional board paid JMM \$5,500 to develop these plans and specifications. The executive officer of the regional board stated that JMM could not develop these plans and specifications because there were problems with defining the site boundaries.

In 1981, the regional board contracted with Chancellor and Ogden, Inc., to haul liquid waste from the Stringfellow site. The contractor was to be paid \$569 per load. However, in one instance, the contractor billed the regional board on the basis of volume plus an hourly labor rate. On this basis, the regional board paid the contractor

from \$465 to \$696 per load for ten loads. The average cost per load was approximately \$626.

In some cases, we could not determine compliance with contract provisions because many of the contracts contained vague or general provisions that could not be tested. For example, JMM, under three of its contracts, was to provide "construction management services," including such tasks as overseeing construction activities, negotiating project changes, and coordinating the timing of the work done by various contractors. The construction management portion of the three contracts totalled approximately \$252,000. However, the contracts did not outline specifically the tasks to be performed. Consequently, we could not assess JMM's compliance with the contracts.

We could not assess compliance by the fourth major contractor, the Stringfellow Quarry Company, Inc., because it was to provide only "maintenance services." The maintenance services included tasks such as removing weeds from the flood control ditches and repairing pumping equipment as necessary. In light of the temporary nature of such services, we could not determine whether the contractor did perform the tasks required by the contracts.

In addition, we could not determine compliance with some contracts for construction work because the work often produced temporary structures that no longer exist. Other contracts resulted in permanent fixtures, such as a clay barrier to contain hazardous material, that we could not examine without costly excavation and engineering work. We concluded that performing such work would not be prudent since the Department of Health Services is currently assessing what additional work needs to be done to close the site permanently.

Did the Work of the Contractors Solve the Problems at the Stringfellow Site?

According to engineering consultants for the Environmental Protection Agency, the engineering and construction contracts at the Stringfellow site solved the immediate problem of containing surface toxic waste. The Department of Health Services will contract for studies to determine what further work is needed to close the site permanently.

As we noted earlier in this report, the regional board selected total removal of toxic waste as the method for closing the Stringfellow site. However, inadequate funding for this plan resulted in the regional board's amending its decision in order to provide for an interim cleanup program

that would prevent the discharge of pollutants from the site. The interim cleanup program was completed in 1982.

In 1983, two consulting firms reported to the EPA on the interim work performed at the site. CH2M Hill, consulting engineers, found past cleanup costs to be reasonable. Black and Veatch, consulting engineers, found engineering and construction work conducted at the Stringfellow site to be satisfactory, considering the time and budget constraints affecting the cleanup work and the fact that the work was an interim solution, not a final closure of the site.

The Department of Health Services completed a site evaluation report on June 3, 1982, which concluded that additional work must be done to close the site permanently. On June 13, 1983, the department released a \$1.74 million Request for Proposal to conduct studies to determine what additional work needs to be done at the Stringfellow site. The study will include an analysis of work already performed at the site; this study should be completed by March 1985.

What Changes Could Be Made to Improve the Future Selection and Effectiveness of Contractors at the Stringfellow Site?

In letting contracts for future work at the Stringfellow site, agencies should follow procedures that meet the intent of the provisions in the State Contract Act and the

State Administrative Manual. Also, an independent review of construction contracts and construction management practices should be performed by public agencies or personnel experienced in public works projects. Finally, contract processing should be streamlined to minimize delays in letting contracts for cleanup work.

Agencies responsible for work at the Stringfellow site should comply with state regulations pertaining to the awarding of contracts. The regional board asked for an exemption from the State Contract Act and the State Administrative Manual so that it could let contracts more quickly, especially for work needed in emergency situations. However, both the State Contract Act and the State Administrative Manual allow for variances that provide for emergency situations. Under the State Administrative Manual, the requirement for competitive bids does not apply in cases of emergency where public health, welfare, or safety are at stake. In addition, the California Water Code (Section 13304(b)) provides that regional water quality control boards may enter into oral contracts in emergency situations.

In our examination of 17 contracts let by the regional and state boards for interim cleanup work at the Stringfellow site, we found that some of the 14 contracts that

did not comply with the State Contract Act and the State Administrative Manual were not awarded in emergency situations. For example, the boards let four sole source contracts for engineering services to the same consulting firm over a period of three years.

In addition, agencies should follow state requirements specifying that work should not begin until after contracts are approved. To protect the interests of the State, the State Administrative Manual directs that a contract must be approved before work begins. The regional board had liquid waste hauled from the site for three years without a contract. In addition, when the regional board did let a hauling contract, the contract was not competitively bid. Further, several other contracts for work at the site were signed after work had commenced.

The State Contract Act and the State Administrative Manual provide guidance in procuring the highest quality of services at the lowest possible price to the State. Since the regional and state boards did not follow these procedures, they cannot be sure that they received the highest quality of service at the lowest price.

The Legislature passed a bill on September 15, 1983, that exempts the Department of Health Services from following

certain procedures in letting contracts for emergency toxic waste cleanup. However, the new law also requires that the department meet several provisions of the existing State Contract Act in establishing regulations to prequalify bidders for emergency cleanup contracts.

Additionally, in future work at the Stringfellow site, public agencies or personnel experienced in public works projects should perform an independent review of contract provisions, plans and specifications, and of construction management procedures to determine their adequacy for properly completing the project if this capability does not exist within the responsible agency. The executive officer of the regional board said that his staff did not have experience in managing a public works project of the magnitude of the Stringfellow cleanup and, therefore, had to rely primarily on contractors for management of the construction activities. Had there been an adequate review process, many of the construction contract and construction management problems could have been avoided. For example, adequate review of the construction contract provisions could have produced precise specifications for the work to be performed.

Agencies responsible for future work at the Stringfellow site should reduce the time taken to process and approve contracts. Delay in getting contracts underway for

cleanup work at the Stringfellow site was caused in part by contract processing problems at the state board. Most contracts let by the regional board were drawn up and reviewed by the state board. The executive officer at the regional board stated that the state board's contract review was at times so slow that for several contracts the regional board permitted the contractors to start the cleanup work prior to the state board's review and approval. The former Stringfellow site coordinator for the department stated that he experienced similar delays in getting contracts approved by the department's contracting office. In one instance, the department's processing of an erosion control contract for the Stringfellow site took four months. Erosion at the site worsened and the department had to take emergency action to prevent the "imminent release of hazardous waste." According to department staff, there is a lack of priority given to contracts for cleanup of toxic waste.

Will There Be Any Federal Reimbursement to Cover the Costs of Cleaning Up the Stringfellow Site?

Efforts by the Department of Health Services to obtain federal funds from the Environmental Protection Agency resulted in the EPA's approving approximately \$10.0 million for past and future cleanup work at the Stringfellow toxic waste disposal site. However, the EPA actually granted approximately \$2.8 million and restricted the grant to pay for future cleanup

work. Reimbursement for past expenditures and additional funding for future cleanup work will depend on future "superfund" appropriations.

The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), commonly referred to as the "superfund" program, became effective on December 11, 1980. Included in this act are provisions for reimbursing states for cleanup of inactive hazardous waste disposal sites. Under the CERCLA, a state must enter into a cooperative agreement with the federal government before the state can receive reimbursement for the costs of remedying problems at a toxic waste disposal site.

On July 2, 1982, the department submitted to the EPA an application for a cooperative agreement, requesting approximately \$6.2 million to pay for past and future cleanup of the Stringfellow site. In August 1982, the EPA suspended processing the application and pursued enforcement activities in order to have the parties responsible for the site pay for the cleanup. The EPA considers as "responsible parties" the previous owner of the site, firms that discharged toxic waste at the site, and others associated with the disposal operation. The department requested that the EPA continue processing the application while seeking a settlement with the responsible parties. The EPA denied that request.

On June 10, 1983, the department submitted to the EPA an amended application for a cooperative agreement, requesting approximately \$12.0 million. Approximately \$4.3 million of the request was for reimbursement of past expenditures by the regional board and the department for maintenance and cleanup work through June 1983. Approximately \$7.7 million was for further cleanup work and studies for permanent closure of the site.

On July 28, 1983, the EPA replied to the department's amended application for a cooperative agreement, proposing that the EPA provide \$10.0 million of the \$12.0 million requested. The EPA approved approximately \$4.2 million to pay for past cleanup work and approximately \$5.8 million for future cleanup. However, the EPA did not actually grant any money for past work, and it granted only approximately \$2.8 million to fund future cleanup of the site. As a result of the EPA's decision, the State would have to amend the cooperative agreement in order to receive additional funds for cleanup of the Stringfellow site. Additional funding would be contingent upon the availability of funds in the "superfund."

On August 18, 1983, the department accepted the approximately \$2.8 million funding from the EPA. The department has written a letter asking the EPA to grant the

additional \$7.2 million it had approved without the State's having to amend the cooperative agreement or depend on "superfund" availability.

CONCLUSION

We have examined 20 contracts let for cleanup of the Stringfellow toxic waste disposal site from 1976 through February 1983.

The State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board let 17 of the contracts we reviewed. We found that the boards did not comply with the competitive bidding provisions of the State Contract Act and the State Administrative Manual in letting 14 of the 17 contracts. However, the boards were exempt from these requirements because of the emergency nature of the problems at the Stringfellow site. The Department of Health Services let 3 of the 20 contracts we reviewed. Although the department was also exempt from the competitive bidding requirements in letting two of the contracts, the department followed the requirements in all three contracts.

Three of the four major contractors did not comply with some provisions of their contracts. Because of the nature

of the fourth contractor's services, we could not determine compliance. In several instances we could not assess contract compliance because of the vague contract provisions, the lack of evidence, or the costly engineering work involved.

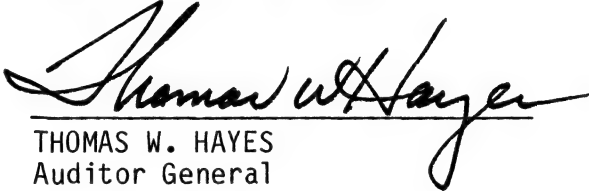
The interim work performed at the Stringfellow site was found to be adequate by the Environmental Protection Agency's engineering consultants. Additional studies for cleanup and abatement work are needed to close the site permanently. The department is presently performing work that will lead to permanent closure of the site.

Future selection and effectiveness of contractors at the Stringfellow site, could be improved if responsible agencies let contracts using procedures that meet the intent of provisions in the State Contract Act and the State Administrative Manual. Also, construction contracts and construction management practices should be closely reviewed by public agencies or personnel experienced in public works projects. Additionally, the processing of contracts for cleanup of toxic waste should be streamlined to minimize delays in letting contracts.

Finally, the EPA has approved approximately \$10.0 million for past and future cleanup work at the Stringfellow site. However, the EPA has only granted approximately \$2.8 million of this amount. The department has asked the EPA to grant the additional \$7.2 million.

We conducted this audit under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specifically contained in the audit request.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: October 11, 1983

Staff: Robert E. Christophel, Audit Manager
William S. Aldrich
Gary L. Colbert
Karen R. Molinari

**HEALTH and WELFARE AGENCY**

OFFICE OF THE SECRETARY
1600 NINTH STREET, ROOM 460
Sacramento, California 95814
(916) 445-6951

September 30, 1983

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

STRINGFELLOW TOXIC WASTE SITE AUDIT

Thank you for the opportunity to review and comment on the draft report to the Joint Legislative Audit Committee entitled "Review of Selected Contracts for Cleanup of the Stringfellow Toxic Waste Disposal Site" dated October 1983.

In reviewing the majority of contracts, you concluded that in most cases the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board contracted without following all applicable state contracting procedures. It is felt that the report should include more recognition of the urgency and risks to public health which existed during and just prior to the interim abatement program.

As the State agency now mandated for principle responsibility for hazardous waste management, the Department of Health Services is in a unique position to perceive the urgency and the risks that can accompany the cleanup of hazardous waste sites. This is especially the case in emergency situations such as existed at Stringfellow in the past, and have occurred to a lesser degree since the Department assumed control of the site last November. Recognition of potential risks to the public and of the urgency of response is important in processing contracts for remedial actions.

Specific comments on the report follow:

<u>Page</u>	<u>Comment</u>
1	More recent records indicate 34 million gallons were discharged, not 32. <u>1</u> / *
3	In "Future Selection of Contractors", the report should acknowledge that emergencies may occur and the interest of the public is best served by adopting an abbreviated contractor selection process as provided by state contracting procedures and that control agencies should be sensitive to those situations.

* The Auditor General's comments on specific points contained in the agency's response begin on the bottom of page 32.

<u>Page</u>	<u>Comment</u>
4	In the third paragraph, substitute the word "intended" for "designed" in the first sentence.
5	The third sentence of the last paragraph should read: "The site was <u>partially</u> neutralized..."
5	Delete the final word on this page: "...any..."
7	Add a final sentence as part of last paragraph on this page: "Depending on groundwater conditions, substantially more waste must be hauled at times".
19	Because of the litigation actions against responsible parties in this case, the Attorney General's Office in Los Angeles should be asked to review this report, especially relative to the question addressed on this page. <u>2/</u>

Again, thank you for the opportunity to comment on the report. If there are any additional questions, please contact Mr. Peter Rank, Director of the Department of Health Services, at 445-1248.

Sincerely,


for DAVID B. SWOAP
Secretary

Auditor General Comments:

1/ Text changed.

2/ The Attorney General's Office is aware of our report.



State of California

SACRAMENTO

GORDON W. DUFFY
Secretary of
Environmental Affairs

September 29, 1983

Mr. Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

REVIEW OF SELECTED CONTRACTS FOR CLEANUP OF THE STRINGFELLOW TOXIC WASTE DISPOSAL

This is to provide a response from the California Regional Water Quality Control Board, Santa Ana Region, and the State Water Resources Control Board to the draft report submitted on September 23, 1983. The report, as drafted, appears overly critical of the fact that most of the State Board and Regional Board contracts for the Stringfellow work were not processed in accordance with the requirements of the State Contract Act and the State Administrative Manual (SAM). The implication appears to be that failure to follow the requirements of the Act on competitive bidding and failure to follow SAM procedures probably resulted in some detriment to the State because:

1. Procurement by competitive bid rather than by sole source contracts might have resulted in some reduction of cost to the State.
2. Failure to follow SAM procedures resulted in some vagueness in portions of the contracts so that contractor compliance or non-compliance could not be determined.
3. Failure to follow SAM procedures allowed work to be done before contracts were formally approved.

In addition, the report indicates that the Regional Board lacked experience in construction supervision and management resulting in an overpayment to one contractor and the need to rely on outside consultants for construction supervision. The report also notes some delay in contract processing.

As a result of their review, your staff recommends that:

1. Future contracts should be processed competitively and SAM procedures should be followed.
2. Construction contracts and construction management practices should be closely reviewed by public agencies or personnel experienced in public works projects.
3. Processing of contracts for cleanup of toxic wastes should be streamlined to minimize delay.

I have no quarrel with the recommendations. Future work will presumably not be done under the emergency conditions faced by the Regional Board. Competitive bidding and SAM requirements serve to protect the government's interest and the interest of the public. Certainly, it is advisable to streamline contract processing where cleanup of toxic waste is involved.

More detailed comments from the State and Regional Boards are included in the attachment.

Please contact me if you have any questions.

Sincerely,


for Gordon Duffy
Secretary of Environmental Affairs
Attachment

General Comments:

The report could have been approached from a different perspective. The fact is that the State Board and Regional Board faced a catastrophic health situation and had to respond on an emergency basis. Accordingly, the Legislature exempted the Stringfellow work from the requirements of the Act and SAM. Most contracts were let without competitive bidding and without control agency review. Nevertheless, the facts show that the contracts were reasonably drafted, work was effectively carried out, the site was properly closed at a reasonable cost to government, and only minor and insignificant problems were experienced. These facts have been confirmed by extensive review and audit by EPA and EPA contractors who found that the work was technically correct, and effectively and efficiently performed at a cost equivalent to or below that expected for similar work under similar circumstances. The activities of the Regional Board were specifically directed at preventing washout of toxic waste, such as had occurred in 1969, or the necessary release of waste material, as occurred in 1978. The prompt actions prevented a catastrophe in the community and demonstrated that the government could act with deliberate speed.

In summary, it does not appear necessary to base the recommendations on an implication that failure to follow usual requirements resulted in some significant project problems when, in fact, no significant problems were encountered.

Lastly, as a general comment, the report should clearly indicate that EPA has firmly committed itself to reimbursement of the \$4.2 million for past cleanup work at this site. As you know, the State and EPA are engaged in litigation to attempt to recover these costs from the parties actually responsible for the site. The only reason that EPA has not provided reimbursement to this date is that funding is being deferred until it has been determined how much of these costs will be reimbursed by the responsible parties. I attach a letter from EPA clearly stating their commitment. 1/ *

Specific Comments:

Did the Procedures for Selecting Contractors Conform to the State Contract Act and the State Administrative Manual?

1. Of the 17 contracts reviewed, three were found to have followed "standard procedures". The total amount of these three contracts was \$2,641,915. These represent 69% of the total contracted amount under review.
2. Stringfellow Quarry Co. contracts were sole source contracts because the work at that time was on Stringfellow property. An outside contractor may have been denied access. Also, an outside contractor would not have been as familiar with the equipment as Stringfellow's employee and would have required closer supervision to prevent errors. The long hours and dedicated service provided by Stringfellow's employee would have been a difficult item to bid competitively. Upon transfer of the site to State ownership, no further contracts with Stringfellow Quarry Co. were used.

* The Auditor General's comments on specific points contained in the agency's response begin after the end of the response on page 39.

3. After initial award of contracts to James M. Montgomery Consulting Engineers, Inc. (JMM) further contracts were negotiated as sole source contracts in order to obtain the special knowledge JMM personnel had regarding the site. This speeded work which was necessary under the urgent conditions.
4. The Paul Hubbs Construction Co. was originally contracted with during the extreme emergency conditions in 1978. Because of the quick response and ability of this company, further contracts were negotiated in 1979 and 1980 to provide winterized protection of the site within limited time frames.
5. Chancellor & Ogden contracts were also obtained for emergency work. The prices negotiated were the lowest available after surveys of the industry. Special capability of this hauler to respond to emergency conditions on short notice prevented serious problems. When non-emergency conditions allowed solicitation of bids, Chancellor & Ogden remained the lowest responsible bidder.^{2/} This remained the case when DOHS solicited bids and chose Chancellor & Ogden to continue to haul waste in 1982-83.
6. The processing of contracts from Sacramento to the contractor to the Regional Board and back to Sacramento resulted in delays which could not be tolerated when urgent conditions required prompt action. When all parties had agreed to the terms and were familiar with the work, start work orders were given. In one instance, the delay encountered by following procedures resulted in the loss of two months work time after the contract had been awarded. Because of short construction time and to prevent washout of waste in winter delays could not be tolerated. The DOHS experienced similar conditions with their erosion contracts that resulted in an emergency and serious threat to the community in 1983.

Did the Contractors Fulfill the Provisions of the Contracts?

7. The reference to the rock drilling contracts by Paul Hubbs Construction Co. failed to note that the contractor was not paid for work which was not performed. The second contract called for higher costs due to the need for more expensive drilling equipment. In addition, a claim for materials pre-purchased by Hubbs for the original work was averted by the second contract.^{3/}
8. The referenced payment to Chancellor & Ogden of an improper invoice is correct. Considering that over 200 invoices were processed, this single error of \$570 in almost \$400,000 paid to the contractor is not significant.
9. Construction management by JMM was used to ensure the contractors performed according to plans and specifications drawn by JMM.^{4/} This is normal practice when agencies do not have in-house inspectors. The on-site inspectors followed JMM procedures which is normal for the industry. Daily reports of activities were filed. Regional Board engineers were in contact with operations at the site continuously. The work of the construction management team of JMM saved considerable time and expense when more than one contractor was on-site.

10. The JMM contract for plans and specifications included costs for fencing and security. All parts of the task were performed except the actual drawings of the fence line. This could not be done until the completion of grading because the boundary line could not be established until that time. However, surveys of the property were done which did allow for boundaries to be established. Designs of equipment security were included in the plans and specifications.

Did the Work of the Contractors Solve the Problems at the Stringfellow Site?

11. Two major problems existed at the site. From 1978 to 1981, conditions existed each winter which would have resulted in a major overflow of waste. This was averted by the construction of temporary berms and facilities to contain the waste. This was successful and prevented washout. The second problem was to provide a stable site by an "interim abatement program". This was accomplished in 1981-82. The EPA consulting firms found the work satisfactory and the costs reasonable. The activities of the Regional Board were never intended to totally solve the problems and were not funded for that purpose. However, the activities of the contractors solved the interim problems to allow pursuit of a more complete program by DOHS.

12. Recommendations for Future Selection of Contractors.

If agencies with public works experience are selected to review future contracts at Stringfellow, care should be taken to assure that construction methods do not compromise the design objectives (i.e. protection of water quality), which must be established by personnel with expertise in that specialty.

13. We agree that State contracting procedures could be streamlined.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 30 1982

12/7 8:49 AM
cc: Chw
(Signed)
10/18
J. Anderson
cc: WRA
WGP
HMS
Board
Member
OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Clint Whitney
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95801

Dear Mr. Whitney:

Thank you for your October 18, 1982, letter concerning CERCLA reimbursement for Stringfellow site costs. I appreciate your concern and regret any misunderstandings on the reimbursement issue.

The October 8, 1982, meeting which you refer to was held to advise representatives from the State of California, EPA Region IX, Penny Newman, and others of my decision on the State's Cooperative Agreement application for remedial action at the Stringfellow site. I explained that there is a high probability that responsible parties may assume financial responsibility for correcting the situation at this site. Therefore, it does not seem appropriate to obligate money from the Trust fund through a cooperative agreement until all negotiations have been completed. ~~In any event, I assure you that EPA will reserve adequate funds to cover the Federal Government's share of remedial action at this site, should that option in fact be implemented.~~

Furthermore, on September 9, 1982, a deviation request for the Stringfellow site was approved by the Director of the Grants Administration Division (see enclosure). The deviation allows certain State costs incurred prior to awarding an EPA cooperative agreement to be reimbursed, if a cooperative agreement is awarded.

I assure you that EPA is still committed to eventual reimbursement of allowable, reasonable site costs to the extent that reimbursement is not obtained from potentially liable parties.

Sincerely yours,

William N. Hedeman Jr.,

Director

Office of Emergency and Remedial Response

Enclosures

AUDITOR GENERAL'S COMMENTS ON THE
ENVIRONMENTAL AFFAIRS AGENCY RESPONSE

We are commenting on the Environmental Affairs Agency response to our audit report in order to provide clarity and perspective to the agency's comments to our report. The numbers correspond to numbers we have placed in the agency's response.

- 1/ The agency states that the EPA committed itself to reimbursement in a November 30, 1982, letter. As reported on pages 25 through 28, the EPA stated on July 28, 1983, that it had approved \$10 million for reimbursement and future work at the Stringfellow site. However, the EPA only provided approximately \$2.8 million to the State for future work, with additional funding contingent upon the availability of funds in federal fiscal year 1984.
- 2/ We noted on page 15 that Chancellor and Ogden, Inc., hauled waste for three years without a contract. When there was competitive bidding for a contract, the price fell from \$569.00 per load to \$527.85 per load.
- 3/ The agency states that "we failed to note" that Paul Hubbs Construction Co. "was not paid for work which was not performed." We note on pages 17 and 18 that the contractor performed construction work with the funds allocated to this contract. We also note that a year later the regional board contracted again with Paul Hubbs Construction Co. for the same work although the contractor was unable to perform the work under the first contract.
- 4/ The agency states that construction management was used to ensure that the contractors performed according to plans and specifications drawn by JMM. As noted on page 19, we could not determine compliance with contract provisions for construction management services because the contracts did not specifically outline the tasks to be performed.

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps